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Scott Wiederhold*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**SCOTT WIEDERHOLD,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED.**

Plaintiff.

V

CONSOLIDATED WORLD TRAVEL INC. dba HOLIDAY CRUISE LINE.

Defendant.

Case No.:

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF PURSUANT
TO THE TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. § 227,
ET SEQ.**

JURY TRIAL DEMANDED

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INTRODUCTION

- 1 1. SCOTT WIEDERHOLD (“Plaintiff”) brings this Class Action Complaint
2 for damages, injunctive relief, and any other available legal or equitable
3 remedies, resulting from the illegal actions of CONSOLIDATED WORLD
4 TRAVEL INC. dba HOLIDAY CRUISE LINE (“Defendant”), in
5 negligently or intentionally contacting Plaintiff on Plaintiff’s cellular
6 telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C.
7 § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff
8 alleges as follows upon personal knowledge as to himself and his own acts
9 and experiences, and, as to all other matters, upon information and belief,
10 including investigation conducted by their attorneys.
- 11 2. The TCPA was designed to prevent calls and messages like the ones
12 described within this complaint, and to protect the privacy of citizens like
13 Plaintiff. “Voluminous consumer complaints about abuses of telephone
14 technology – for example, computerized calls dispatched to private homes –
15 prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132
16 S. Ct. 740, 744 (2012).
- 17 3. In enacting the TCPA, Congress intended to give consumers a choice as to
18 how creditors and telemarketers may call them, and made specific findings
19 that “[t]echnologies that might allow consumers to avoid receiving such
20 calls are not universally available, are costly, are unlikely to be enforced, or
21 place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243,
22 § 11. Toward this end, Congress found that

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25 [b]anning such automated or prerecorded telephone calls to the
26 home, except when the receiving party consents to receiving the
27 call or when such calls are necessary in an emergency situation
28 affecting the health and safety of the consumer, is the only
 effective means of protecting telephone consumers from this
 nuisance and privacy invasion.

Id. at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s purpose).

4. Congress also specifically found that “the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call....” Id. at §§ 12-13. See also, *Mims*, 132 S. Ct. at 744.

5. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA case regarding calls to a non-debtor similar to this one:

The Telephone Consumer Protection Act ... is well known for its provisions limiting junk-fax transmissions. A less-litigated part of the Act curtails the use of automated dialers and prerecorded messages to cell phones, whose subscribers often are billed by the minute as soon as the call is answered—and routing a call to voicemail counts as answering the call. An automated call to a landline phone can be an annoyance; an automated call to a cell phone adds expense to annoyance.

Soppet v. Enhanced Recovery Co., LLC, 679 F.3d 637, 638 (7th Cir. 2012).

JURISDICTION AND VENUE

6. This Court has federal question jurisdiction because this case arises out of violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).

7. Venue is proper pursuant to 28 U.S.C. § 1391 for the following reasons: (i) Plaintiff resides in the County of San Luis Obispo, State of California which is within this judicial district; (ii) the conduct complained of herein occurred within this judicial district; and, (iii) Defendant conducted business within this judicial district at all times relevant.

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PARTIES

8. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the County of San Luis Obispo, State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 277(a)(2)(A).

9. Defendant is a national cruise sales company and is a “person” as defined by 47 U.S.C. § 227(a)(2)(A). Defendant’s State of Information and principal place of business are in the State of Florida.

FACTUAL ALLEGATIONS

10. Plaintiff alleges that at all times relevant herein Defendant conducted business in the State of California, County of San Luis Obispo, and within this judicial district.

11. At no time did Plaintiff ever enter into a business relationship with Defendant.

12. Beginning in or about December 2014, Plaintiff began receiving text messages from Defendant on Plaintiff's cellular telephone.

13. Specifically, Plaintiff received the following text message from Defendant on Plaintiff's cellular telephone number ending in 8477 on February 5, 2015:

You have prizes to claim. Call (813)515/1836

14. Plaintiff was immediately curious of the text message because the sender was unknown to Plaintiff.

15. As such, Plaintiff dialed the telephone number identified in Defendant's text message and was connected to Defendant's representative who tried to convince Plaintiff that Plaintiff won a prize from Defendant.

16.Upon Plaintiff's inquiry as to the identity of Defendant, Defendant offered to send Plaintiff an e-mail proving Defendant's identity.

17. Shortly thereafter, Plaintiff received an e-mail from Register@HolidayCL.com at 12:42 p.m. on February 5, 2015 from Defendant. Said e-mail described the services offered by Defendant and continued to solicit Plaintiff's business.

18. Defendant used an “automatic telephone dialing system”, as defined by 47 U.S.C. § 227(a)(1) to the artificial or prerecorded message to Plaintiff as prohibited by 47 U.S.C. § 227(b)(1)(A).

19. This ATDS has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

20. These telephone communications constituted telephone solicitations as defined by 47 U.S.C. § 227(a)(4).

21. Defendant's calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

22. Defendant's calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

23. Plaintiff has never been in an “established business relationship” with Defendant as defined by 47 U.S.C. 227(a)(2), nor has Plaintiff ever sought Defendant’s services at any point in the past.

24. Defendant lacked “prior express consent” to contact Plaintiff on Plaintiff’s cellular telephone as described herein.

25. To date, Plaintiff has received approximately fifteen text messages and/or autodialed telephone calls on Plaintiff's cellular telephone from Defendant.

26. These telephone communications by Defendant, or its agent, violated 47 U.S.C. § 227(b)(1).

CLASS ACTION ALLEGATIONS

27. Plaintiff brings this action on behalf of himself and on behalf of all others similarly situated (“the Class”).

1 28. Plaintiff represents, and is a member of the Class, consisting of all persons
2 within the United States who received any text message from Defendant or
3 their agent/s and/or employee/s to said person's cellular telephone made
4 through the use of any automatic telephone dialing system or with an
5 artificial or prerecorded message, which text message was not sent for
6 emergency purposes within the four years prior to the filing of this
7 Complaint.

8 29. Defendant and its employees or agents are excluded from the Class.
9 Plaintiff does not know the number of members in the Class, but believes the
10 Class members number in the hundreds of thousands, if not more. Thus, this
11 matter should be certified as a Class action to assist in the expeditious
12 litigation of this matter.

13 30. Plaintiff and members of the Class were harmed by the acts of Defendant in
14 at least the following ways: Defendants, either directly or through its agents,
15 illegally contacted Plaintiff and the Class members via their cellular
16 telephones by using an ATDS, thereby causing Plaintiff and the Class
17 members to incur certain cellular telephone charges or reduce cellular
18 telephone time for which Plaintiff and the Class members previously paid,
19 and invading the privacy of said Plaintiff and the Class members. Plaintiff
20 and the Class members were damaged thereby.

21 31. This suit seeks only damages and injunctive relief for recovery of economic
22 injury on behalf of the Class, and it expressly is not intended to request any
23 recovery for personal injury and claims related thereto. Plaintiff reserves the
24 right to expand the Class definition to seek recovery on behalf of additional
25 persons as warranted as facts are learned in further investigation and
26 discovery.

27 32. The joinder of the Class members is impractical and the disposition of their
28 claims in the Class action will provide substantial benefits both to the parties

1 and to the court. The Class can be identified through Defendants' records or
2 Defendants' agents' records.

3 33. There is a well-defined community of interest in the questions of law and
4 fact involved affecting the parties to be represented. The questions of law
5 and fact to the Class predominate over questions which may affect
6 individual Class members, including the following:

- 7 a) Whether, within the four years prior to the filing of this Complaint,
8 Defendant or its agents initiated any telephonic communications to the
9 Class (other than a message made for emergency purposes or made
10 with the prior express consent of the called party) to a Class member
11 using any automatic dialing and/or SMS texting system to any
12 telephone number assigned to a cellular phone service;
- 13 b) Whether Defendant can meet its burden of showing it obtained prior
14 express consent (i.e., consent that is clearly and unmistakably stated);
- 15 c) Whether Defendant's conduct was knowing and/or willful;
- 16 d) Whether Plaintiff and the Class members were damaged thereby, and
17 the extent of damages for such violation; and
- 18 e) Whether Defendants and its agents should be enjoined from engaging
19 in such conduct in the future.

20 34. As a person that received at least one telephonic communication from
21 Defendant's ATDS without Plaintiff's prior express consent, Plaintiff is
22 asserting claims that are typical of the Class. Plaintiff will fairly and
23 adequately represent and protect the interests of the Class in that Plaintiff
24 has no interests antagonistic to any member of the Class.

25 35. Plaintiff and the members of the Class have all suffered irreparable harm as
26 a result of the Defendants' unlawful and wrongful conduct. Absent a class
27 action, the Class will continue to face the potential for irreparable harm. In
28 addition, these violations of law will be allowed to proceed without remedy

1 and Defendants will likely continue such illegal conduct. Because of the
2 size of the individual Class member's claims, few, if any, Class members
3 could afford to seek legal redress for the wrongs complained of herein.

4 36. Plaintiff has retained counsel experienced in handling class action claims
5 and claims involving violations of the Telephone Consumer Protection Act.

6 37. A class action is a superior method for the fair and efficient adjudication of
7 this controversy. Class-wide damages are essential to induce Defendants to
8 comply with federal and California law. The interest of Class members in
9 individually controlling the prosecution of separate claims against
10 Defendants is small because the maximum statutory damages in an
11 individual action for violation of privacy are minimal. Management of these
12 claims is likely to present significantly fewer difficulties than those
13 presented in many class claims.

14 38. Defendant has acted on grounds generally applicable to the Class, thereby
15 making appropriate final injunctive relief and corresponding declaratory
16 relief with respect to the Class as a whole.

17 **FIRST CAUSE OF ACTION**

18 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

19 **47 U.S.C. § 227 ET SEQ.**

20 39. Plaintiff incorporates by reference all of the above paragraphs of this
21 Complaint as though fully stated herein.

22 40. The foregoing acts and omissions of Defendant constitutes numerous and
23 multiple negligent violations of the TCPA, including but not limited to each
24 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

25 41. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq.,
26 Plaintiff and The Class are entitled to an award of \$500.00 in statutory
27 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

42. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

**KNOWING AND/OR WILLFUL VIOLATIONS OF THE
TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227 ET SEQ.**

43. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

44. The foregoing acts and omissions of Defendant constitutes numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

45. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff and The Class are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

46. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and The Class Members pray for judgment as follows:

- Certifying the Class as requested herein;
 - Providing such further relief as may be just and proper.

In addition, Plaintiff and The Class Members pray for further judgment as follows:

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**FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
 - Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
 - Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING/WILLFUL VIOLATION OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
 - Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
 - Any other relief the Court may deem just and proper.

TRIAL BY JURY

47. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: February 5, 2015

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s Matthew M. Loker
MATTHEW M. LOKER, ESQ.
ATTORNEY FOR PLAINTIFF